

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

2008 MSPB 119

Docket No. DE-844E-07-0435-I-1

**John Doe,
Appellant,**

v.

**Office of Personnel Management,
Agency.**

OPM Claim No. CSA 8 309 856

June 5, 2008

John Doe, Phoenix, Arizona, pro se.

Peggy G. Smith, Washington, D.C., for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman

OPINION AND ORDER

¶1 The appellant has filed a petition for review of the initial decision that affirmed an Office of Personnel Management (OPM) reconsideration decision disallowing her application for disability retirement benefits under the Federal Employees' Retirement System (FERS). For the reasons explained below, we GRANT the petition under 5 C.F.R. § 1201.115, REVERSE the initial decision, and DO NOT SUSTAIN OPM's reconsideration decision.

BACKGROUND

¶2 The appellant, a PS-5 Sales, Services and Distribution Associate (Window Clerk) began her employment with the U.S. Postal Service in 1985. Initial Appeal File (IAF), Tab 9, Subtab II-D at 3, Subtab II-E at 3, 7, 8. Her duties included performing a variety of sales and customer support services at a post office in Tucson, Arizona. IAF, Tab 9, Subtab II-D at 11-12; Tab 13, Ex. 1d. The appellant claims that over the last several years of her employment she was subjected to a hostile work environment. Although she filed multiple complaints regarding her working conditions, including allegations of physical and verbal sexual harassment, she asserts that the hostile work environment continued. She claims that, in late 2003, as a result of her working conditions and the agency's failure to take appropriate corrective action in response to her complaints, she began experiencing symptoms of mental disorders that, despite treatment under medical supervision, became chronic and severe, and rendered her unable to perform her duties as of early 2006. IAF, Tab 13, Exs. 2c-2d; Hearing CD (testimony of the appellant). The appellant stopped reporting to work on February 8, 2006. IAF, Tab 13, Exs. 1d, 41. According to the appellant's supervisor, she exhausted her leave under the Family Medical Leave Act and is in an absent-without-leave status. *Id.*, Ex. 1d.

¶3 On or about June 5, 2006, the appellant applied for disability retirement, asserting that she suffered from the following disabling conditions: Post traumatic stress disorder (PTSD), anxiety, panic attacks, depression, trouble sleeping, nightmares, and trouble concentrating and staying awake. IAF, Tab 9, Subtab II-D at 1-2. She claimed that these conditions interfered with her job performance in that she was unable to stay focused on tasks, was forgetful of procedures, and had unsatisfactory attendance. *Id.* at 1. She stated that she was unable to go to a post office without having anxiety attacks. *Id.*

¶4 In support of her application, the appellant has relied on the medical opinions and records from her family physician, her therapist, and her current and

former psychiatrists. IAF, Tab 9, Subtab II-B, Subtab II-D at 7-8; Tab 13. The medical records reflect that the appellant first sought treatment for her mental health conditions in December 2003, when she was diagnosed with generalized anxiety disorder due to work-related issues. IAF, Tab 9, Subtab II-D at 7. Despite following a recommended course of treatment involving various medications and therapy over the next 2 ½ years, she continued to experience symptoms of “anxiety, pervasive fear, depression, impaired concentration, memory deficits, hypervigilance, flashbacks, nightmares, and a labile effect.” *Id.*, Subtab II-B at 3. In early 2006, the appellant was diagnosed with panic disorder, depression, and PTSD. *Id.* at 3-4. The appellant’s medical care providers all found that the appellant’s medical conditions arose from her experience working for the U.S. Postal Service in what she perceived to be a hostile and discriminatory environment, and as of mid-2006 they all generally agreed that her conditions were so severe that she should not return to work for the U.S. Postal Service. IAF, Tab 9, Subtab II-B at 3-10, Subtab II-D at 7-8; Tab 13, Exs. 3-4.

¶5 OPM found that there was insufficient documentation to show a disabling medical condition. IAF, Tab 9, Subtab II-A at 2. OPM’s reconsideration decision states that “[s]uch evidence would include, but not be limited to sequential, historical medical data including progress notes, mental status examinations, personality tests and tests of cognitive function.” *Id.* OPM also found that there was a lack of evidence showing that the appellant’s conditions were “not amenable to ongoing treatment and therapy (for example, psychotherapy)” and thus OPM could not “get a comprehensive representation of the nature of [the appellant’s] condition, the degree of [her] impairment, or [her] clinical course.” *Id.*

¶6 The appellant filed an appeal with the Board, alleging that OPM failed to consider all of her medical documentation. IAF, Tab 1 at 4. After a telephonic hearing, the administrative judge affirmed OPM’s reconsideration decision. IAF,

Tab 17, Initial Decision (ID) at 2. The administrative judge found that the medical evidence failed to establish that the appellant “could not perform the essential functions of her position in general, but instead indicates that she could not perform them in what she perceived as a hostile environment; thus, the medical evidence shows that the appellant’s disability is situational.” ID at 8. In concluding that the appellant’s conditions were “situational” and therefore not a basis for disability retirement, the administrative judge gave significant weight to her finding that the appellant was able to function satisfactorily in a different work environment as a cashier at Starbucks from July to September 2007. ID at 4, 7-8.

¶7 The appellant has filed a petition for review, disputing the administrative judge’s conclusion that her conditions are “situational” and therefore not disabling. Petition for Review File, Tab 1 at 4-5. OPM has not responded to the petition for review.

ANALYSIS

¶8 In an appeal from an OPM decision on a voluntary disability retirement application, the appellant bears the burden of proof by preponderant evidence. *Thorne v. Office of Personnel Management*, 105 M.S.P.R. 171, ¶ 5 (2007); 5 C.F.R. § 1201.56(a)(2). To be eligible for a disability retirement annuity under FERS, an employee must show the following: (1) She completed at least 18 months of creditable civilian service; (2) while employed in a position subject to FERS, she became disabled because of a medical condition, resulting in a deficiency in performance, conduct or attendance, or, if there is no such deficiency, the disabling medical condition is incompatible with either useful and efficient service or retention in the position; (3) the disabling medical condition is expected to continue for at least 1 year from the date that the application for disability retirement benefits was filed; (4) accommodation of the disabling medical condition in the position held must be unreasonable; and (5) she did not

decline a reasonable offer of reassignment to a vacant position. *Thorne*, 105 M.S.P.R. 171, ¶ 5; *see* 5 U.S.C. § 8451(a); 5 C.F.R. § 844.103(a).

¶9 The record shows, and it is undisputed, that the appellant had completed more than 18 months of civilian service creditable under FERS at the time she filed her application, that the agency was unable to provide the appellant with a reasonable accommodation, and that the agency made no offer of reassignment to another position. IAF, Tab 9, Subtab II-D at 4, 9-10, Subtab II-E; Tab 16 at 2-3. Thus, the appellant's entitlement to a disability retirement annuity depends on whether she had a disabling medical condition and whether her condition was expected to continue for at least 1 year from the date of her application.

¶10 In determining whether an applicant is entitled to disability retirement, OPM must consider objective clinical findings, diagnoses and medical opinions, subjective evidence of pain and disability, evidence relating to the effect of the appellant's condition on his ability to perform in the grade or class of position last occupied, and evidence that the applicant was not qualified for reassignment to a vacant position at the same grade or level that was last occupied. *E.g.*, *Guthrie v. Office of Personnel Management*, 105 M.S.P.R. 530, ¶ 4 (2007). Although objective medical evidence must be considered, such evidence is not required to establish disability. *Vanieken-Ryals v. Office of Personnel Management*, 508 F.3d 1034, 1040-44 (Fed. Cir. 2007); *Chavez v. Office of Personnel Management*, 6 M.S.P.R. 404, 418-23 (1981). As stated by our reviewing court, "OPM must consider all of an applicant's competent medical evidence, and an applicant may prevail based on medical evidence that . . . consists of a medical professional's conclusive diagnosis, even if based primarily on his/her analysis of the applicant's own descriptions of symptoms and other indicia of disability." *Vanieken-Ryals*, 508 F.3d at 1041.

¶11 The appellant asserted that her medical conditions began in late 2003. IAF, Tab 13, Exs. 2, 2c. The record shows that on December 2, 2003, her family physician, Kim Charani, D.O., initially diagnosed her with generalized anxiety

disorder due to work-related issues. *Id.*, Exs. 15-16. Over the next 2 ½ years, Dr. Charani evaluated her fifteen other times regarding her mental health conditions. *Id.*, Exs. 15-35. According to Dr. Charani, the appellant developed panic disorder and eventually PTSD. *Id.*, Ex. 15. Dr. Charani noted that, until February 2006, the appellant had “continued to try to work, even though her symptoms on most days are debilitating.” *Id.* Dr. Charani explained that the appellant had been on multiple medications for her psychiatric conditions, and was under the care of a psychologist and a psychiatrist. *Id.* Although the appellant had been “extremely compliant in her visits in therapy,” she had only a “mixed response to therapy” and was referred to the psychiatrist for treatment. *Id.* Dr. Charani concluded that it was “in [the appellant’s] best interest to leave her present employment and seek employment elsewhere in order to, hopefully, help her in regards to her medical problems.” *Id.*

¶12 In a letter dated May 3, 2006, the appellant’s psychologist Larry Peter, MSW, LCSW, stated as follows:

I have been [the appellant’s] therapist since 2/16/2006. Thus[]far, we have had nine sessions. Her diagnosis is [PTSD], based on her symptoms of fear, depression, anxiety, avoidance, flashbacks, nightmares, sleep and concentration disturbances. All of these symptoms are directly related to her psychological abuse and sexual harassment in her employment with the U.S. Postal Service. There are no other situational factors in her current life or past history that either cause or contribute to these symptoms.

[The appellant] is an active and compliant participant in her therapy which consists of cognitive therapy, systematic desensitization and in-vivo desensitization. She is gradually improving, but on many days she is still significantly debilitated. Her length of disability cannot be determined at this time.

IAF, Tab 9, Subtab II-D at 8.

¶13 The record reflects that the appellant sought treatment from psychiatrist Daniel Cohen, M.D., on April 21 and May 24, 2006. *Id.*, Subtab II-B at 9. In his report dated May 24, 2006, Dr. Cohen diagnosed her with “[d]epression not otherwise specified . . . , probable major depression, single episode . . . , with

elements of panic and [PTSD].” *Id.* at 10. He found her to be compliant with the therapy and medication he prescribed. *Id.* He noted that “[h]er response to therapy has been moderate so far, although I have only seen her twice.” *Id.* He was unable to estimate an expected date of full or partial recovery, or remission, and he stated, “I have not put restrictions on her activities, although it seems that return to work at the post office would be so anxiety provoking as to be prohibitive for her. Again, I don’t know the extent of time this will continue.” *Id.*

¶14 Psychiatrist Howard Toff, M.D., Ph.D., who is Board Certified in Adult Psychiatry, began treating the appellant on June 1, 2006. IAF, Tab 9, Subtab II-B at 3, 8. On March 23, 2007, Dr. Toff prepared a detailed, six-page report describing the appellant’s psychiatric condition and particularly explaining how her PTSD rendered her unable to provide useful and efficient service in her position with the U.S. Postal Service. *Id.* at 3-8. At that time, he had evaluated the appellant on five occasions. *Id.* at 3. In his report, Dr. Toff stated that the appellant presented to him with symptoms of PTSD, depression, and anxiety, and that her symptoms had been progressive since 2003. *Id.* at 3, 7. In describing the appellant’s PTSD, Dr. Toff explained that the appellant “repeatedly has felt as if she was actually reliving past work-based traumatic interactions and has experienced the same physical symptoms . . . including: anxiety, panic attacks, feeling as if ‘going crazy,’ feeling ‘out of control,’ uncontrollable crying, heart palpitations, anger and fear.” *Id.* at 5. He credited the appellant’s description of her intense psychological distress and physiological reactivity to cues symbolizing or resembling an aspect of her work-related trauma as follows:

[The appellant] reported “Whenever I encounter a [‘]postal related subject[,] i.e. Post office vehicles, large blue collection boxes, post offices, postal uniforms[,] I become agitated and anxiety ridden. I feel helpless, overwhelmed, confused, and frustrated. Similarly, when I see people gossiping or find myself accused ... of something, I feel out of control, angry, helpless, and panicky. When I feel someone is following me, I feel threatened and think I am being

stalked and become fearful, helpless, vulnerable, panicky, and want to flee or hurt someone.”

. . . .

[The appellant] describes the following symptoms on exposure to internal or external cues: “become anxious, jumpy, heart rate increases, become hot, flustered, begin to stutter or slur my speech, feels like my head is in a fog, panic stricken, experience difficulty breathing, become lightheaded, and feel the need to escape, hide or not exist.”

Id.

¶15 Dr. Toff reported that, in order to avoid activities associated with past work-related traumatic events, the appellant stopped working, was socially reclusive, avoided contact with anyone related to the work environment, and planned to relocate away from Tucson. *Id.* In particular, he noted that the appellant:

no longer utilize[s] the services of the postal service, delaying or avoiding picking up the mail, and minimizing or avoiding hav[ing] conversations even with the Postal Workers Union (because it causes too much anxiety, promotes flashbacks, makes [her] irritable, angry, depressed, and feels like [she is] out of body.[])

. . . .

[The appellant] . . . feel[s] uncomfortable in social interactions, having no desire to be in an intimate relationship or have friends outside [her] family circle. She now feels basically mistrustful of people and is not comfortable providing any personal information about herself to anyone. She feels she now has difficulty working closely with others (and felt that way when she tried working, unsuccessfully, at a [d]eli in Seattle, Washington area this past fall). In Tucson, she avoids going anywhere that she’d be likely to run into a former coworker, fearing she’d feel urges to “want to kill them,” or simply intense anxiety, fear, paranoia, or shame.

Id. at 5-6. Dr. Toff found that the appellant experienced persistent symptoms of increased arousal (not present before the trauma), such as difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating,

hypervigilance, and exaggerated startle response upon seeing U.S. Postal Service trucks or employees. *Id.* at 6-7.

¶16 Dr. Toff stated that he was “able to wean her off medication and her mood has remained relatively stable but her PTSD symptoms are persistent and have not responded to the various interventions that have been tried.” *Id.* at 3. Dr. Toff testified at the hearing that her symptoms remained “fairly persistent” despite treatment, which included supportive psychotherapy with him every 4-6 weeks and had previously included various prescribed medications. Hearing CD. He explained that he weaned her off of the medications because they did not relieve her symptoms and just brought on side effects.¹ *Id.* Dr. Toff concluded that the appellant’s conditions were “chronic, severe and incompatible with working in any Post Office setting.” IAF, Tab 9, Subtab II-B at 7. He explained as follows:

She has disabling anxiety at the thought of working in any Post Office setting, has been written up for failure to follow directives, and sees herself as likely to demonstrate poor judgment, commit errors, possibl[y] endanger[ing] herself or others were she to return to a postal setting and perhaps most importantly sees herself as vulnerable to further psychological abuse.

. . . [G]iven her symptoms, their persistence despite medication and counseling, the likelihood that no accommodations that would allow her to return to work at a Post Office and her subjective experiences, I support a medical retirement.

Id. At the hearing, Dr. Toff gave his prognosis for the appellant as “fair,” stating that she would not be able to return to work for the U.S. Postal Service, but indicated that she probably can be “relatively successful” in another line of work. Hearing CD.

¹ The appellant testified that the medications had adverse side effects, such as causing her to “zone out,” lose focus, and make mistakes at work (for instance, forgetting to lock a safe when closing the post office). Hearing CD.

¶17 OPM found that there was insufficient documentation to show that the appellant had a disabling medical condition, citing the absence of “sequential, historical medical data including progress notes, mental status examinations, personality tests and tests of cognitive function.” IAF, Tab 9, Subtab II-A at 2. In doing so, OPM improperly discounted the probative value of the medical evidence summarized above. The absence of “objective” measures or tests as described by OPM is not dispositive. *See Vanieken-Ryals*, 508 F.3d at 1041-42; *Chavez*, 6 M.S.P.R. at 418-22. Here, the record demonstrates that, while employed in a position subject to FERS, the appellant became disabled due to her psychiatric condition. Her condition resulted in a deficiency in her attendance and is incompatible with useful and efficient service and retention in her position, as all of the medical evidence and opinions in the record indicate that the appellant’s psychiatric condition precludes her from working in any capacity for the U.S. Postal Service. *See Kimble v. Office of Personnel Management*, 102 M.S.P.R. 604, ¶¶ 12, 15 (2006) (finding that the appellant was entitled to disability retirement benefits where, inter alia, the medical evidence established that the appellant’s depression and anxiety prevented her from working at any position in the U.S. Postal Service). Further, the record belies OPM’s conclusion that “there is a lack of evidence to show [the appellant’s] conditions are not amenable to ongoing treatment and therapy (for example, psychotherapy).” IAF, Tab 9, Subtab II-A at 2. It is clear from the documentation submitted by the appellant’s medical care providers that attempts at treatment since 2003, including therapy and various medications, have not been successful in alleviating the appellant’s condition to the point that she may render useful and efficient service in her position.

¶18 We disagree with the administrative judge’s determination that the appellant is not entitled to disability retirement because her medical condition was merely “situational,” i.e. only apparent in her particular work environment at the U.S. Postal Service. ID at 7-8. The record establishes that job-related stress

precipitated and exacerbated the appellant's psychiatric condition, which was itself disabling. The Board has repeatedly held that job-related stress resulting in physical or mental ailments that prevent an employee from performing the duties required in her position can warrant the granting of disability retirement. *Thorne*, 105 M.S.P.R. 171, ¶ 15; *Kimble*, 102 M.S.P.R. 604, ¶ 14; *Bell v. Office of Personnel Management*, 87 M.S.P.R. 1, ¶ 18 (2000); *Marczewski v. Office of Personnel Management*, 80 M.S.P.R. 343, ¶ 7 (1998); *Pugh v. Office of Personnel Management*, 38 M.S.P.R. 184, 188-89 (1988). The cause of the condition is not relevant in determining whether an employee is eligible for disability retirement. *Marucci v. Office of Personnel Management*, 89 M.S.P.R. 442, ¶ 9 (2001) (rejecting the notion that the appellant was ineligible for disability retirement because sexual harassment and working conditions, rather than duties, created the appellant's disabling mental condition). Instead, the relevant issue is whether the condition prevents the employee from rendering useful and efficient service in her position. *See id.*; *see also* 5 U.S.C. § 8451(a); 5 C.F.R. § 844.103(a).

¶19 The record evidence shows that the appellant's symptoms, though certainly aggravated by her working at the U.S. Postal Service, were nevertheless apparent outside of that specific work environment. For instance, Dr. Toff's report explains how her symptoms have impacted areas of her life outside of her employment with the U.S. Postal Service. IAF, Tab 9, Subtab II-B at 3-8; *cf. Kimble*, 102 M.S.P.R. 604, ¶ 13 (finding that the appellant was entitled to disability retirement benefits where, *inter alia*, the medical evidence established that the appellant's depression and anxiety were long-standing and impacted areas of her life outside of her employment with the U.S. Postal Service). Moreover, the record does not support the administrative judge's finding that the appellant "functioned satisfactorily in a different work environment." ID at 7-8. The evidence indicates that the appellant's two attempts at other employment were unsuccessful due to her psychiatric condition. Dr. Toff reported that the appellant's "unsuccessful[]" attempt at working at a deli in Seattle, Washington,

in the fall of 2006 was symptomatic of her PTSD. IAF, Tab 9, Subtab II-B at 6. The appellant's stint at the deli lasted only 10 days. Hearing CD (testimony of the appellant); IAF, Tab 13, Ex. 2c. Further, the appellant testified that she quit her job as a part-time cashier at Starbucks because it became too stressful for her and she could not stay focused on her job duties.² Hearing CD. Thus, her subsequent work history supports a finding that her psychiatric condition was not confined to her work environment at the U.S. Postal Service. *See Bell*, 87 M.S.P.R. 1, ¶ 19 (testimony concerning the appellant's job experiences after her removal from the U.S. Postal Service was relevant to the question of whether her condition was confined to her situation at the U.S. Postal Service); *Marczewski*, 80 M.S.P.R. 343, ¶ 7 (rejecting OPM's argument that the appellant's diagnoses were "merely situational, resulting from the interpersonal relationship with his supervisor," where symptoms persisted in another employment situation); *cf. Wilkey-Marzin v. Office of Personnel Management*, 82 M.S.P.R. 200, ¶ 14 (1999) (finding that the appellant was not entitled to disability retirement benefits, where, inter alia, she was able to maintain full-time employment outside of the federal service despite her alleged disabling conditions).

¶20 A disability annuitant claimant must establish the extent to which her disability can or cannot be controlled. *Wilkey-Marzin*, 82 M.S.P.R. 200, ¶ 15. The appellant and Dr. Toff testified regarding the failure of prescribed medications to control her condition. Hearing CD. In addition, the reports from the appellant's other medical care providers confirm the failure of therapy and

² We disagree with the statement in the initial decision that the appellant only left her cashier position "because juggling both school and work was too stressful." ID at 5. The appellant never referred to any problems "juggling" her priorities. She testified that she left Starbucks because the stress level was too high in that portion of her testimony describing the impact of her psychiatric conditions on her everyday life. She explained that she is able to attend school 2 nights a week despite her medical condition because the school work is "self-paced." Hearing CD (testimony of the appellant); IAF, Tab 13, Ex. 2d.

medications to control her condition to the point that she is able to render useful and efficient service. There is no indication in the record that the appellant has refused any recommended treatment. To the contrary, her medical care providers indicated that she was an active and compliant participant in therapy and in taking her prescribed medications. IAF, Tab 13, Exs. 4, 15; Tab 9, Subtab II-B at 10. Thus, we find no evidence to suggest that the appellant's treatment was successful in returning her to a point where she was able, even with some form of accommodation, to perform the duties of her position. *See Marucci*, 89 M.S.P.R. 442, ¶ 13 (finding that the appellant was entitled to FERS disability retirement benefits where, inter alia, the record did not support the conclusion that the appellant's condition was being successfully treated with medication and therapy).

¶21 The record shows that the appellant's disabling condition has continued for more than 1 year from the date her disability retirement application was filed. Her conditions have been ongoing and "progressive" since late 2003. IAF, Tab 9, Subtab II-B at 7. At the hearing on October 9, 2007, more than 1 year after her retirement application, both the appellant and Dr. Toff testified credibly that her disabling condition was ongoing and she was continuing to receive treatment. Hearing CD. Dr. Toff testified credibly that she would never be able to return to work at the U.S. Postal Service. *Id.*

¶22 We note that the appellant testified that the Social Security Administration and Office of Workers' Compensation Programs (OWCP) have denied her applications for benefits. *Id.*; *see also* IAF, Tab 9, Subtab II-D at 13. Although we have considered these determinations, they are not binding on the Board's decision and they do not outweigh the evidence supporting a finding that the appellant is entitled to a disability retirement under FERS. *See Trevan v. Office of Personnel Management*, 69 F.3d 520, 526 (Fed. Cir. 1995) (in considering a disability retirement application under FERS, OPM and the Board must consider an award of Social Security disability benefits, but may find that this evidence is

outweighed by the medical evidence); *Suter v. Office of Personnel Management*, 88 M.S.P.R. 80, ¶¶ 10, 12 (2001) (“OWCP’s determination that an appellant *does not* qualify for compensation is not dispositive of the appellant’s rights under the disability retirement statutes”; “OPM and the Board must consider an award or a termination of OWCP benefits, but may find that this evidence is outweighed by other medical evidence.”).

¶23 Accordingly, we find that the appellant has met her burden of proving by preponderant evidence her entitlement to a FERS disability retirement annuity.

ORDER

¶24 We ORDER OPM to award the appellant disability retirement benefits. OPM must complete this action no later than 20 days after the date of this decision.

¶25 We also ORDER OPM to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and to describe the actions it took to carry out the Board's Order. We ORDER the appellant to provide all necessary information OPM requests to help it carry out the Board's Order. The appellant, if not notified, should ask OPM about its progress. *See* 5 C.F.R. § 1201.181(b).

¶26 No later than 30 days after OPM tells the appellant it has fully carried out the Board's Order, the appellant may file a petition for enforcement with the office that issued the initial decision on this appeal if the appellant believes that OPM did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes OPM has not fully carried out the Board's Order, and should include the dates and results of any communications with OPM. *See* 5 C.F.R. § 1201.182(a).

¶27 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

NOTICE TO THE APPELLANT
REGARDING YOUR RIGHT TO REQUEST
ATTORNEY FEES AND COSTS

You may be entitled to be paid by the agency for your reasonable attorney fees and costs. To be paid, you must meet the requirements set out at Title 5 of the United States Code (5 U.S.C.), sections 7701(g), 1221(g), or 1214(g). The regulations may be found at 5 C.F.R. § § 1201.201, 1201.202 and 1201.203. If you believe you meet these criteria, you must file a motion for attorney fees WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION. You must file your attorney fees motion with the office that issued the initial decision on your appeal.

NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not

comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board
Washington, D.C.